

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-214110

DATE

April 25, 1984

MATTER OF:

Rogar Manufacturing Corporation

DIGEST:

1. Bid offering delivery period greater than maximum delivery period permitted under terms of invitation was properly determined to be nonresponsive.
2. Protester has not met its burden of affirmatively proving its contention that no deviating delivery period for first article test report was inserted in its bid where evidence consists of conflicting information supplied by protester and contracting agency.
3. Issue of nonresponsibility of bidder need not be submitted to SBA where bid was properly rejected as nonresponsive.
4. Protest against issuance of negotiated procurement instead of an advertised one filed after closing date for receipt of initial proposals is untimely and not for consideration.
5. Where request for proposals permits award based upon initial proposals and contracting agency has not yet determined whether negotiations with offerors submitting acceptable proposals will be necessary, protest that agency should negotiate with protester is premature.

Rogar Manufacturing Corporation (Rogar) protests the rejection of its bid and the award to any other bidder under United States Army Armament Munitions and Chemical Command (AMCCOM) invitation for bids (IFB) No. DAAA09-83-B-4662, the issuance of AMCCOM request for proposals (RFP) No. DAAA09-83-R-4804, or, in the alternate, the AMCCOM failure to negotiate with Rogar under the latter solicitation.

We deny the protest.

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The solicitation specified a 180-day delivery for the first article test report, although bidders were permitted to bid an alternate delivery period not exceeding 240 days. After four lower bidders were eliminated due to various reasons, Rogar's fifth low bid was rejected as nonresponsive since its 290-day delivery period was greater than the maximum period permitted.

Rogar, a small business, protests the rejection of its bid because, although the copy of its bid in the AMCCOM report to our Office shows that Rogar inserted a delivery period of 290 days, Rogar contends that it did not insert a 290-day delivery period in its bid, but rather left the space for such an insertion blank, thereby accepting the 180-day delivery period in the IFB. In support of its contention, Rogar submitted the office copy of its bid showing the blank space. Rogar notes that during the preaward survey conducted on it, the survey team advised Rogar that it should have bid the maximum 240-day delivery period rather than the 180-day period, and that, after the survey team debriefed Rogar on the "no award" survey findings, Rogar, on September 6, 1983, requested AMCCOM to change its delivery period to 240 days. Rogar further notes that while bids were opened on July 20, 1983, and the determination of nonresponsibility was developed and finalized in August-September 1983, the alleged 290-day delivery period was not discovered until December 1983 when AMCCOM rejected the bid. Rogar concludes that the above facts and the fact that preaward surveys generally are conducted only on responsive bidders show that the 290-day delivery period was not in the Rogar bid. Rogar requests that its original bid be submitted to an appropriate investigative organization to ascertain when the 290-day delivery period was inserted. In view of the nonresponsibility determination, Rogar protests the failure of AMCCOM to forward the question of Rogar's responsibility to the Small Business Administration (SBA).

Rogar's protest raises serious charges. It is the duty of a protester to affirmatively prove its case. Where the only evidence consists of conflicting statements and information and documents, the protester has not met that burden. Global Crane Institute, B-204849, March 10, 1982, 82-1 CPD 224.

We recognize that the fact that a preaward survey was conducted, the survey team's indication of Rogar's delivery period compliance and the lengthy period before discovery of

the nonconforming delivery period in the bid conceivably support Rogar's view. However, evidence exists to the contrary. The agency insists that the bid as submitted contained the 290-day figure. Our review of the bid shows that the typed 290-day figure is consistent in form with the other typed numbers inserted on the bid. Further, the record contains a signed bid abstract dated on the bid opening day which, in effect, refers to a deviating delivery time for Rogar. (This abstract shows that seven other bidders deviated from delivery times in some respect.) Furthermore, figures in the office copy submitted by Rogar are handwritten, not typed. Finally, as requested by Rogar, we spoke with the appropriate member of the survey team and learned the following. The survey team was not provided with a copy of the Rogar bid, but merely a copy of the invitation. The survey team had no knowledge of what delivery periods Rogar had bid other than what Rogar might have told it. As a consequence, we find that the protester has not proved its case, and it is not incumbent upon us to cause an investigation by another organization.

In view of this holding, we find the Rogar bid was properly found to be nonresponsive. In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the terms and specifications of the invitation. A bid which takes exception to any of the essential requirements--one of these being the delivery schedule--of the invitation is not responsive and must be rejected. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322; Polychromic Designs, B-203980, September 22, 1981, 81-2 CPD 238. To allow correction (based upon the Rogar contention regarding what it bid) of a nonresponsive bid would undermine the integrity of the system of competitive bidding even where the immediate advantage to the government might be an award to a lower priced bidder, and correction may not be allowed. Dayton Chemical Corporation, B-200122, May 13, 1981, 81-1 CPD 373. Because Rogar submitted a nonresponsive bid, the issue of Rogar's responsibility is not for referral to the SBA. Defense Acquisition Regulation § 1-705.4(c) (1976 ed.); Chipman Van & Storage, Inc.--Reconsideration, B-205732.2, February 19, 1982, 82-1 CPD 146.

Rogar also protests the issuance of the RFP for an approximately equal number of pistols, contending that a negotiated procurement will be more expensive than an advertised procurement and because Rogar feels that its issuance

was merely to avoid the problems that had arisen under the IFB. In the alternate, Rogar requests that AMCCOM be required to negotiate with Rogar on the basis of the proposal Rogar submitted.

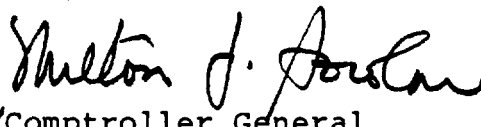
This issue is untimely and not for consideration. Our Bid Protest Procedures require that a protest alleging improprieties in an RFP be filed prior to the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983). Rogar did not protest this issue until after the closing date for the receipt of initial proposals. In any event, we note that the request for proposals was issued prior to the determined nonresponsiveness of the Rogar bid.

Finally, the RFP provided that:

"The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government."

The contracting agency has advised that it is considering the proposals received and that it has made no determination as to whether negotiations must be conducted. Therefore, Rogar's alternate contention is premature.

The protest is denied.

for 
Comptroller General
of the United States